UNITED NATIONS DOCUMENTS 1995 TD/B/SCP/AC.1/2/Add.1

READEX UNCTAD--Trade & Dev. Board

Special Com. on Preferences

UNITED
NATIONS

TD

United Nations Conference
on Trade and Development

Distr.
GENERAL

TD/B/SCP/AC.1/2/Add.1
8 May 1995

ENGLISH ONLY

TRADE AND DEVELOPMENT BOARD
Special Committee on Preferences
Intergovernmental Group of Experts
on Rules of Origin
Geneva, 19 July 1995
Items 3 and 4 of the provisional agenda

HARMONIZATION, SIMPLIFICATION AND IMPROVEMENT OF THE RULES OF ORIGIN

Summary of replies received from preference-giving and preference-receiving countries to the questionnaire prepared by the UNCTAD secretariat[1]

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[1] The questionnaire is contained in annex I.

INTRODUCTION

1. Against the background described in document TD/B/SCP/AC.1/2 and the discussions held during the twenty-first session of the Special Committee on Preferences, the UNCTAD secretariat sent a questionnaire to all member States of UNCTAD to seek the views of both preference-giving and preference-receiving countries on GSP rules of origin. It was felt that since the international trade environment had changed since the last Sessional Committee on Rules of Origin, e.g. with the conclusion of the Uruguay Round, it was important to obtain country positions on GSP rules of origin in order to reflect them in the 1995 policy review. The replies are summarized below and, in order to make for an easier review, have been divided into two main categories: those received from preference-giving countries and those received from preference-receiving countries. In addition, they are summarized according to the specific questions raised. A list of countries which responded is contained in annex II. It should be noted that the questionnaires were sent to UNCTAD member States in 1994 and reflect the situation at that time, when Austria, Finland and Sweden were still EFTA preference-giving countries and had not yet acceded to the European Union.

I. PREFERENCE-GIVING COUNTRIES

(1) The GSP rules of origin consist of three main elements, namely, origin criteria, documentary evidence and the direct consignment rules. What is your country's position with regard to these elements? On which element(s) should attention focus?

2. With certain qualifications, the Governments of Australia, New Zealand, Austria and Finland stated that the origin criterion was the item on which attention should focus. In addition, the European Union, Switzerland, Finland and Austria indicated that documentary evidence was another item of the rules of origin which should be considered. Canada, Japan and Hungary considered that all three elements of the rules of origin were equally important. In the view of Canada, the origin criteria would require the greatest analytical effort. Switzerland, while suggesting focusing on the origin criterion, stated that a distinction should be made between developing countries and least developed countries and pointed out the important role that rules of origin would play in the context of the 1995 policy review on GSP. In general, all replies from preference-giving countries reiterated the view that origin rules are an integral part of the GSP schemes in order to ensure that GSP benefits accrue to products which are generally produced or obtained in a preference-receiving country.

(2) Would your Government consider the proposal to change your present basic origin system for GSP to: (i) an across-the-board percentage criterion for all products? (ii) the process criterion (using, inter alia, the change in HS headings)? If yes, what would be the preferred way of specifying qualifying processes for GSP purposes and the range of products for which such definitions are required?

3. Canada said that, while applying an across-the-board percentage criteria, it was open to the idea of considering the use of harmonized rules of origin based on tariff shifts. Japan stated that it would not consider changing its present basic origin system (process criterion). It said that it was "afraid what might occur in certain cases under a percentage criterion. For example, "when a product which is "processed" in an advanced country with relatively high labour costs is able to satisfy the criterion, the same product, if processed in a less advanced country, may not satisfy the same criterion because of the lower cost of labour". Switzerland said it was quite open to all ideas for harmonizing origin criteria and was prepared to examine an across-the-board percentage criterion if this was a key element for harmonization. However, if the process criterion was to be adopted by all preference-giving countries, Switzerland pointed out that a number of considerations would have to be taken into account, in particular:

- Where the change in tariff heading was considered too flexible, additional elements should be added in terms of the percentage rule for materials imported from third countries;
- Where the change in tariff heading was considered too restrictive, a more flexible rule would have to be formulated.

In addition, Switzerland stated that a product-by-product analysis was necessary and recommended that, given the impressive number of tariff headings, the UNCTAD secretariat should as far as possible use the work of the Technical Committee established within the World Customs Organization. In conclusion, the Government of Switzerland expressed its desire to consider a mixed system in which certain products would be subject to the percentage criterion and others to the change-in-tariff-heading criterion. The harmonization of rules of origin among preference-giving countries was considered important.

4. The European Union stated that it was prepared to consider any proposals designed to harmonize origin systems, provided that an equal effort was made by all member States of UNCTAD. New Zealand affirmed that while it presently utilized the percentage criterion, it was considering whether a change of criterion would, in general and in the longer-term, be preferable to facilitate world trade. In its reply, Australia affirmed that it did not "see need to change the existing Australian" across-the-board percentage criterion.

5. Hungary applies the percentage criterion to determine the origin of goods and said that no changes were to be expected in this area. Austria stated that its rules of origin were based on the process criterion. Finland stated that it had adopted the process criterion and did not intend to change.

(3) Is further harmonization of origin systems feasible without a change in the basic system? For example by: (i) the expression of the percentage rules applied within percentage and process systems in terms of an internationally agreed maximum percentage of third country contents allowed and of common definitions; (ii) product-specific harmonization across preference-giving countries for all percentage requirements applied by any scheme to an individual eligible product; (iii) any other way of harmonization?

6. Canada said that a potential role for ad valorem harmonization among preference-giving countries should not be ruled out. However, in view of the differences between preference-giving countries utilizing the percentage criterion, the WTO exercise aimed at developing harmonized rules of origin for non-preferential purposes could be a useful basis. Switzerland suggested that in an initial stage harmonization might be envisaged between the United States, Australia and New Zealand which apply the percentage system based on minimum local content, Canada which applies a system based on maximum imported content, and Japan and EFTA preference-giving countries which apply a system based on change of tariff heading coupled with additional percentage rules on maximum imported material. As a first step, the minimum local content percentage could be harmonized between the preference-giving countries utilizing this system. The next step would be to determine to what extent their practical effect differs from the adoption of an internationally agreed maximum percentage of third country inputs. Harmonization might also be considered by the European Union, EFTA preference-giving countries and Japan through replacement of the special single list rules with percentage rules of 40/50 per cent calculated as a maximum allowance of imported inputs based on the experience gained by Canada. Another step could be consideration of product-specific harmonization by all preference-giving countries for all percentage requirements.

7. The European Union pointed out that uniform application of the rules of origin between EFTA preference-giving countries and the current member States of the Union (1994) would come into force on 1 January 1995. The European Union considered that harmonization of the rules of the European preference-giving countries was in itself a step forward towards harmonization.

8. New Zealand said that it did not wish to compromise what it believed to be a fair and transparent system in the name of harmonization. However, referring to question 3(i), New Zealand stated that the proposal was acceptable provided that the new criterion would not lead to a retreat from its current practice. In response to question 3(ii), it did not favour the adoption of differential origin criteria within the GSP. Australia stated that its origin criteria allowed any product from a developing country to claim preference as long as 50 per cent of the final value of the product came from a developing country source. Effectively, this rule set the maximum for third country content. Australia saw no particular advantage in seeking internationally agreed criteria in this area.

9. Hungary stated that it was ready to explore further harmonization of the origin systems without change to its basic system. Austria stated that a real and meaningful harmonization of origin systems would require changes in the basic system of at least some preference-giving countries. The Austrian Government was, however, open to any useful proposals which might emerge from further discussions. Finland stated that it was prepared to discuss proposals aimed at further harmonization.

(4) Is there scope for simplifying the application of the process criterion: (i) on a national basis, by consolidating combinations of criteria for a single product into a single process requirement for that product? (ii) internationally, by progressively agreeing amongst some or all preference-giving countries on a single list of common process criteria for each eligible product?

10. Canada felt that the process criterion should be avoided as much as possible. Japan thought that the current combinations of criteria for a product were the minimum to ensure attainment of the objective of the rules of origin. Accordingly, there was little room for further simplification of such requirements. Japan did not deny the possibility of harmonization of the single list. However, it pointed out that it had already relaxed some requirements in the field of textiles and there was little scope at present for harmonization of the single lists accompanied by further simplification.

11. Switzerland welcomed an international approach to the options contained in question 4. Such an approach would have to be similar to the one envisaged in the framework of the Agreement on Rules of Origin negotiated under the Uruguay Round. The European Union considered that harmonization of the rules of the European preference-giving countries was itself a step toward harmonization. Austria said that a high level of harmonization had already been achieved in the application of the process criterion. In particular, origin rules of

the European Union and EFTA preference-giving countries were almost identical. Finland expressed the same view, adding that it was prepared to consider any further harmonization.

12. New Zealand stated that its present criteria did not discriminate between products. Certain product groups posed special problems for the application of the process criterion. These difficulties were probably surmountable in the context of the GATT/WTO review of rules of origin over the next three years. In response to question 4(ii), New Zealand felt that each individual preference-giving country had to design its GSP programme to account for a unique set of economic conditions and that it did not wish to find itself creating a less generous scheme through this sort of simplification process. Australia stated that it did not use the process criterion nor did it apply different levels of preference to specific products.

(5) Is the introduction of donor-country contents applied, envisaged or feasible? (i) If not, what are the specific problems and difficulties preventing its introduction? (ii) If applied, what use has been made of this facility (countries, products, frequencies, etc.)? Have any major difficulties arisen and how could they be resolved?

13. Canada and Japan have already introduced donor country content. They reported having no problem with its application. However, no data were available concerning its use. Switzerland, the European Union and Finland said they were considering such an option. Austria considered that the main problem related to donor country content might be resolved through application of the customs procedure of outward processing.

(6) Is cumulation amongst preference-receiving countries applied, envisaged or feasible? Amongst all beneficiary countries or developing country beneficiaries? In favour of specific subregional groupings, with possibilities for extension? (i) If not, what are the specific problems and difficulties preventing its introduction? (ii) If applied, what use has been made of this facility? Have any major difficulties arisen and how could they be resolved?

14. Canada said that it allowed full cumulation of materials among all beneficiary countries. The Canadian experience with cumulation rules had shown that in a few instances, some certifying authorities in some beneficiary countries seemed to be either unaware of the rules or reluctant to apply them. Canada was ready to consider proposals to harmonize cumulation rules among all preference-giving countries. Japan stated that it applied regional cumulation to certain regional associations, such as ASEAN, and considered that "global cumulation" might cause abuse of GSP by non-beneficiaries and this might hinder the objectives of the GSP, i.e. the economic development of developing countries. It was therefore more realistic to apply this treatment to specific regional groupings in which origin certificate systems were well established. Japan had introduced regional cumulation for ASEAN after detailed consultations to confirm the appropriateness and reliability of its origin certification system.

15. Switzerland stated that it had applied, together with its EFTA partners, a partially cumulative regional system. Beneficiary countries forming a regional economic grouping and wishing to use the

cumulative system had to ask the donor country concerned or the EFTA secretariat in Geneva in advance indicating the measures taken by the grouping in order to utilize this possibility. Cumulative treatment was only applied once the request was approved by the donor country. However, Switzerland pointed out that the advantages offered by the cumulative origin system were practically never used because cumulation was difficult to apply; evidence of origin had to be exchanged between beneficiary countries and there had to be administrative control among them. Cumulation among all developing countries had not been envisaged to date. The reasons included the complexity of the procedures for the beneficiary countries (the materials imported from a third country had to meet the rules of origin of the EFTA countries) and the difficulty of conducting reliable controls a posteriori.

16. Australia, New Zealand and Hungary stated that they applied full and global cumulation. No information was available on the use made of the system. Finland said that it applied regional cumulation to ASEAN and was prepared to extend the system to other regional groupings. Austria substantially shared this view.

(7) Does your country apply or envisage special origin criteria in favour of least developed countries? By way of ad hoc derogations in specific cases? As a general rule with less stringent requirements (for example by a lower percentage requirement or a tariff jump at the six-digit level of the Harmonized System)?

17. Japan, Australia, New Zealand and Hungary stated that in view of the present situation they did not provide or envisage any special rules of origin criteria for LDCs. The European Union and Switzerland pointed out that a special procedure for derogation was already contained in their schemes. Switzerland added that few requests had been made so far and that it would consider reviewing its present system in the framework of global harmonization. Canada said that it already applied special origin criteria in favour of LDCs. It should be noted that full cumulation for LDCs applied only among the LDCs. Austria and Finland said that a special derogation might be envisaged.

(8) Are improvements in administrative and certification procedures intended or feasible: (i) regarding technical aspects of Form A (paper quality, etc.)? (ii) regarding certification procedures (notification requirements, limitations of certifying authorities, etc.)? (iii) regarding consignment requirements? (iv) regarding other aspects, taking also into account eventual possibilities of internal harmonization of rules and procedures applied in other origin systems of your country?

18. Japan, Switzerland, New Zealand, Australia and Hungary said that at the moment they had no intention of further amending their rules of origin in this area. The European Union attached great importance to the administrative and certification procedure and hoped that discussions might deal with this issue. Austria said it was necessary to adapt the notes on the back of GSP Form A. In addition, the necessity of maintaining Form APR had to be considered. Finland said it was considering the possibility of accepting the invoice declaration instead of Form APR where it is needed. Canada was not aware that any of the physical aspects of Form A had caused difficulties. Its experience had shown that beneficiary countries

frequently did not establish GSP administrative focal points. This issue might be addressed by further technical assistance through UNCTAD or other organizations. In addition, Canada pointed out that some LDCs had never designated a certifying authority. Canada said it was currently reviewing its consignment requirements and would be interested in the views of beneficiary countries on how these might be improved. Canada had begun its preparatory work for the rules of origin harmonization discussions taking place under the auspices of WTO.

II. PREFERENCE-RECEIVING COUNTRIES

19. The replies of preference-receiving countries to the questionnaire are summarized below. The content and form of the replies vary depending on the beneficiary country concerned. Some countries have added comments which, while not relating directly to the specific questions, are nevertheless relevant to the subject. These comments, where appropriate, have been summarized. Other countries did not reply directly to the questions posed. In such cases, attempts have been made to draw the possible response from the text provided. When this was not possible, the countries concerned were not quoted. Every effort has been made to reflect the views and comments of beneficiary countries in a clear and pragmatic manner.

(1) The GSP rules of origin consist of three main elements, namely, origin criteria, documentary evidence and the direct consignment rules. What is your country's position with regard to these elements? On which element(s) should attention focus?

20. Chad, China, Colombia, Malta, Nepal, Philippines and Sri Lanka said that attention should focus on the origin criteria. Mauritius, Mexico and Togo felt that all three elements of the rules are equally important. Bolivia, Ecuador and Ethiopia said that, as land-locked countries, they wished to focus attention on the direct consignment rule. In addition, Bolivia attached equal importance to documentary evidence. Mali and Niger felt attention should focus on documentary evidence.

(2) Would your country prefer an across-the-board percentage criterion or the process criterion (specifying individual product requirements using, inter alia, the change in HS tariff position) as applied by major existing schemes in order to determine whether substantial transformation has occurred?

21. The Belarus, Central African Republic, Niger and the Republic of Korea expressed preference for the process criterion. Indonesia did not express a clear preference, while Bolivia, Colombia, Malta, Mauritius, Nepal, Philippines, Sri Lanka, Thailand and Togo expressed preference for the adoption of an across-the-board percentage criterion. Jordan said that it would prefer a mixture of process and percentage criteria. Ethiopia said that it had not yet gained enough experience in this area to make a choice. Mexico stated that it might prove more convenient to use one or the other criterion depending on the kind of product. Ecuador expressed preference both for the process criterion and the 35 per cent minimum local content.

22. China expressed preference for the process criterion insofar as it is simple and straightforward. The percentage criterion relies heavily on prices which are by their very nature quite elastic and vary depending on the sources. China added that it was not always easy to obtain accurate information on prices. For example, for dolls (HS 9520) and toys (HS 9502) which are similar kinds of products, the criteria are not the same under any one scheme. In fact, for dolls a change of tariff heading is required, while for toys an additional percentage criterion is applied whereby the imported raw material must not exceed 50 per cent of the ex-works price. However, determining such prices is not without difficulty.

23. Bangladesh found that, under the process criterion, the manufacturer had to cope with a number of manufacturing stages. In fact, besides the basic rule of change of tariff heading which determined sufficient working or processing, it was found that many industrial products fell under a specific conditional list where the manufacturer had to fulfil rigid and specific requirements. Under the percentage criterion, many donor countries applied a high value added rule (50%), a requirement that a manufacturer in a developing country (particularly an LDC) could not meet. Bangladesh therefore proposed a harmonized percentage criterion instead of the process criterion in which import contents should not exceed 75 per cent of the total FOB value of GSP-eligible products. There should also be special treatment for LDCs. In case of limited harmonization, Bangladesh preferred the rules of origin applied under the Canadian scheme, where there is a combination of special rules of origin for LDCs, donor country content and global cumulation.

(3) Which exporters and what products are encountering particular problems with the origin rules, as applied with regard to: (i) understanding the implications of different rules for the same products? (ii) the need to adjust production processes or input sourcing to different criteria in different preference-giving countries? (iii) the stringency of particular criteria for important export products (are there specific cases, for example, where exports are possible to the United States but not to the European Union or vice versa)? (iv) any other problems?

24. The Central African Republic and Chad had not encountered any specific difficulties with rules of origin, since they exported only agricultural or wholly obtained products. Senegal had encountered some problems because of the different sets of rules of origin existing under the various schemes. Niger encountered problems for all products. Ecuador reported having problems on the origin of fishery products as far as the European Union was concerned.

25. Mexico reported problems due to the different rules applied by the schemes for textile, clothing, and iron and steel products. More specifically it reported the following:

> "(ii) Some enterprises producing mats in Mexico have had to change their suppliers of raw materials in order to comply with the origin criterion laid down by the European Union, which is generally speaking stricter than that of other countries (manufacture from coconut thread, thread made from synthetic or artificial strands, natural fibres or discontinuous synthetic or artificial fibres which have not been carded, combed or in any other way transformed for weaving). For example, some Eastern European countries accept that the value of imported inputs should not exceed 50 per cent of the FOB price at the port of export, while for the United States direct domestic costs should account for at least 35 per cent of the ex-factory price.
>
> (iii) Before the North American Free Trade Agreement came into force, the GSP arrangements in the United States were much more flexible than other arrangements; consequently this country was able more easily to export under the GSP arrangements of the United States products such as mats, unwoven cloth, some types of thread, laminated steel products and ready-made clothing.

However, these products did not qualify to receive preferential tariff treatment in the European Union.

(iv) The regulations on the subject of origin laid down in the GSP of the European Union requires the government authorities in beneficiary countries to apply strict controls on the issuance of certificates of origin. In Mexico there are trading enterprises which do not produce the goods they export and consequently do not have access to the information which might prove that the products to be exported comply with the rules on origin, but that information is necessary for the issuance of a certificate of origin. As a result these enterprises cannot export under the GSP scheme even though their products comply with the rules of origin established by the European Union."

26. Togo stated that exports of industrial products encountered various problems in connection with the rules of origin requirements. In addition, the adaptation to the different manufacturing processes requested under the different rules caused difficulties.

27. Colombia replied that:

> "Certain difficulties have in general arisen in the following sectors of the Colombian economy: fisheries, chemicals and petrochemicals, footwear, textiles, made-up clothing and glass articles. This is mainly the case in connection with the interpretation of the origin criterion and compliance with its requirements which, in certain cases, bear no relation to the manufacturing processes used for our products. The main difficulties arise in connection with the GSP schemes of the European Union and of the countries members of the European Free Trade Association. The fact that these rules are more stringent than the criteria of the scheme of the United States of America reduces the possibility of exporting certain products to the European Union."

28. Nepal replied that there were frequent difficulties in receiving GSP treatment in certain European Union member States, especially for items of wool such as hand-knotted woollen carpets and woollen knitted products. The problems mainly concerned the interpretation by certain European Union member States of the scheme's rules of origin. Ethiopia reported no problems.

29. Thailand replied that:

> "Most Thai industrial exports are products such as jewellery, textiles, electronics, plastic products and some agriculture products, such as prepared or preserved fish, prepared or preserved fruit, that are encountering particular problems with the origin rules as a result of the need to adjust production processes or input sourcing to different criteria in different preference-giving countries. For example, the Canadian GSP scheme requires 60 per cent local content for calculation of the percentage criterion, while the United States GSP scheme requires only 35 per cent local content, so that the exporters who have

> to face such problems with the implications of different rules for the same products need to adjust their production processes or input sourcing to different criteria applied by Canada and the United States. In order to simplify and harmonize these rules, the same basic level of percentage of local content concerned should be adopted by all preference-giving countries. The local content requirement should be reduced to a reasonable level such as 25-30 per cent."

30. Mali said that the complexity of the rules of origin made it difficult to understand the impact of the different rules applied.

31. Bangladesh expressed concern about the different conditionalities applied under the European Union rules of origin which hampered full utilization of the scheme. It cited as an example the case of womens' garments, for which a two-stage transformation is required. However, if the product is a knitted garment, then a three-stage transformation is required. The rationale for this rule was not clearly understandable. Bangladesh therefore proposed that the European Union should relax its rules of origin concerning knitted garments, allowing a two-stage process. The European Union should grant donor country content and global cumulation instead of proposed SAARC cumulation. Bangladesh also mentioned that the United States does not grant GSP treatment to ready-made garments, and its exports to the United States are under the annual quotas. It also added that in the case of other exportable items, the local content requirement applied by the United States and Canada was difficult to fulfil. In view of the above, Bangladesh proposed that, inter alia, the value-added criteria for the United States and Canada should be brought down to 25 per cent.

32. Indonesia reported some problems in applying the percentage criterion under the United States GSP scheme. More specifically, it referred to certain difficulties encountered by certifying authorities in verifying the costs of the various materials and components used while the prices of these fluctuated constantly. In comparison, the process criterion appeared to be simpler even if, in some cases, this criterion also involved a percentage criterion in some cases. The Philippines reported difficulties in complying with rules of origin for textiles, clothing and electronic goods. While some exporters were gradually adjusting to the stringent origin criteria of the European Union and Japan, the tendency was to concentrate on the United States market, where the origin criterion was easier to comply with. Sri Lanka answered that exporters of knitted garments had encountered problems under the rules of origin of the European Union, since the origin criteria requires that the manufacturing process has to start from the fibre stage, for which facilities are inadequate in Sri Lanka.

33. Belarus reported major difficulties as follows: different sets of rules adopted by each preference-giving country; the need to adjust the production process or import sourcing to different criteria in order to comply with preference-giving country requirements; the stringencies of particular criteria for important export products,

such as garments, which are not considered by the European Union as originating in the exporting country when produced from imported fabric. Mauritius had no problems to report.

34. China said that it was very difficult and complicated to determine origin on the basis of the different rules of origin for the same product and provided the following examples:

> "(a) Some kinds of shoes under section HS 64 in whose manufacture no imported shoe parts (HS 6406) are employed meet the European Union's origin criteria, but the value of the imported raw material does not accord with Canada's GSP origin criteria. Hence these shoes cannot be given GSP treatment by Canada.
>
> (b) In the case of electrical cable with connectors, the manufacture of which uses imported raw materials of a value not exceeding 40 per cent of the item's ex-factory price, the cable meets the European Union's origin criteria, but the imported materials used include electrical wire that could come under HS 8544 and its value exceeds 5 per cent of the ex-factory price, so the cable does not satisfy the Japanese rules of origin.
>
> (c) For toys, under 9503, the requirements of the European Union, Austria, Finland, Switzerland and Sweden are that (i) they must use raw materials and components from outside this product category, and (ii) the aggregate value of all non-original materials and components must not exceed 50 per cent of the product's ex-factory price. Norway's requirements are that (i) the section 8501, 8504 and 8526 materials used in manufacture must be original, and the aggregate value of raw materials from outside the tariff category used in manufacture must not exceed 50 per cent of the ex-factory price. The Canadian rule is that the value of the imported parts must not exceed 40 per cent of the value of the product at the ex-factory price, packed and ready for shipment to Canada, while the Australian rule is that the last manufacturing process must have taken place in the preference-receiving country, and that the preference-receiving country's contribution to the value of the product must not be less than 50 per cent of its ex-factory cost, the "preference-receiving country's contribution and the value" being understood to mean the value of the raw materials and labour from the country concerned, another preference-receiving country or Australia.
>
> "Issues such as these are raised by many products: dolls (9502), ball-point pens and fountain pens (9608), clocks and watches, under section 91, sheet steel (7301) and soap (3401), etc.
>
> Owing to discrepancies between the rules of origin under different schemes, preference-receiving countries have no option but to revise manufacturing processes and the sources of their raw materials to suit the various origin criteria. Besides the cases mentioned above, there are others, e.g.:

(a) If, in an electrically powered toy car that uses an imported motor, the value of the import does not exceed 50 per cent, the toy qualifies for GSP treatment in the European Union but does not satisfy Norway's origin criteria;

(b) For radio recorders exported to Japan and the Common Market, Japan imposes no restrictions on the transistors, but the European Union requires original (domestically manufactured) transistors to be used. Thus in some circumstances manufacturers have no choice but to alter the composition of their inputs to suit their export markets.

Clothing and electronic goods are staple Chinese exports, but many preference-giving countries apply particularly harsh origin criteria to these products. For example:

(a) Textile products under HS sections 60, 61, 62 and 63: the process criterion starts with yarn and encompasses washing instructions, labels, marks and trade marks.

(b) Under the rules of some schemes, the transistors in electronic goods under a part of HS section 85 must be entirely original. Leaving aside the low value of the transistors, in practice, for trading reasons, the sources of supply of raw materials for manufacturing are quite extensive. Many products have lost their qualification for preference because they have used non-original transistors.

(c) In the process lists of certain schemes, the value of additional raw materials from the same tariff category in the process lists of HS sections 84-96 must not exceed 5 per cent of the ex-factory price of the product. This is a particularly harsh rule that severely limits the ability of preference-receiving countries' exports to qualify for preference.

Discrepancies routinely arise in the determination of a product's HS section, and different preference-giving countries hold different viewpoints on the classification of national products. In certain cases one even finds that the local customs authorities of preference-giving countries which are themselves in agreement take differing views of one and the same product. For example, many countries classify computer model boards and function cards under HS 8471 but Germany puts them under HS 8473; Germany puts electronic translators under HS 8543 while other countries classify them under HS 8471."

35. Malta reported that, in general, exporters in all areas had encountered difficulties in understanding the implications of different rules for the same products and had to adjust their production processes or input sourcing to different criteria so as to satisfy the requirements under various schemes. There were many instances, particularly with products falling within HS headings 84, 85, 87, 90 and 91, where the product could not qualify under the GSP schemes of countries such as Japan and EFTA preference-giving countries due to the fact that for some products two or three

requirements must be satisfied. (Malta has an Association Agreement with the European Union and thus is not a beneficiary of their GSP scheme.) Under schemes such as those of the United States, Canada, the Czech Republic, etc., where a single percentage rule is applied for all products, it was found that the rules of origin were more straightforward to understand and work out. Additionally, Malta had encountered an unusual problem in the case of gold jewellery under the Canadian GSP scheme. The problem arose due to the intrinsically high value of the imported gold bullion, so that although the gold chain was completely manufactured and finished in Malta, it was impossible to keep within the 40 per cent maximum foreign input allowance. The gold bullion was not imported from Canada or any other Canadian GSP beneficiary, so that neither the donor country content rule nor the global cumulation facility could be made use of. On the other hand, under the United States scheme, the product qualified under the "substantial transformation" clause, and under the schemes of EFTA preference-giving countries, Japan, etc., the change in "tariff heading" requirement was satisfied.

(4) Has your country taken advantage of the donor country content facilities, where applied (donor country, type of product, frequency, etc.)? Were any problems encountered?

36. The following countries have not taken advantage of donor country content: Ethiopia, Mauritius, Nepal, Niger and Togo,. In contrast, Ecuador has benefited from donor content. Mexico has taken advantage of the facilities provided under the scheme of Japan and hoped that similar facilities would be extended by other preference-giving countries. Colombia has also benefited, particularly as regards the chemical sector. Thailand has used donor country content under the scheme of Japan and asked that current exclusions existing under the donor country content for certain products be eliminated. China has benefited mostly in the case of Japan, New Zealand, Australia and Canada. The main products concerned include clothing, electronic goods, textiles and light engineering products. However, the benefits have not, in general, been large. Bangladesh felt that donor country content had not been very helpful. Indonesia reported that it had used donor country content under the scheme of Japan. The Philippines reported that utilization of donor country content had been minimal. Sri Lanka had taken advantage under the Japanese scheme, particularly in the case of brushes, ceramic ware and electronic components. Belarus had taken advantage of donor country content under the scheme of the European Union. Malta said that, where applicable and possible, donor country content had been used. The Republic of Korea was against the principle of donor country content insofar as preferences for the use of donor country content products may distort the trading system in terms of sufficient allocation of resources. Jordan said that it had made use of donor country content to a very limited extent.

(5) Has your country taken advantage of the regional/subregional cumulation facilities, where applied (donor country, type of product, frequency, examples of regional inputs and sources)? Were any problems encountered?

37. The following countries had not benefited from cumulation: Bolivia, Chad, Mexico, Niger (since it is not a member of any regional

association to which this option is granted), Bangladesh, Nepal, Sri Lanka, Togo (because it is a member of the South Asian Association for Regional Cooperation - SAARC - which does not presently benefit from regional cumulation), Belarus, Ethiopia, Malta and Mauritius.

38. On the other hand, Colombia has taken advantage of the cumulation rules under the scheme of the European Union, especially with regard to fishery products. China reported that the benefits from cumulation, either regional or global, have been small. First, China is not a member of any regional association, and secondly, when it could benefit from global cumulation the impact had been small. Indonesia reported little benefit from regional cumulation since the components that could be produced by ASEAN member countries were limited. Moreover, the extent of cumulation under the GSP scheme of the United States had been reduced after the exclusion of Singapore and Brunei Darussalam from the scheme. The Republic of Korea argued for full and global cumulation.

(6) In the case of least developed countries, has your country drawn effective benefits from more favourable origin requirements or derogation possibilities, where available (main products, frequency, etc.)? If not or rarely, what have been the major problems or obstacles with regard to the use of such facilities?

39. Central African Republic, Chad, Niger and Togo all replied in the negative. Ethiopia had no information available. Nepal said that full and global cumulation should be granted to LDCs. Bangladesh stated that there are no favourable rules of origin for LDCs and no benefits have been received so far by Bangladesh. It was in favour of special rules for LDCs.

(7) What improvements in administrative or certification procedures or in consignment and other ancillary origin rules would be most needed with respect to individual GSP schemes?

40. Bolivia said that, in order to improve the documentary requirements, it was very important to have a continuous and periodic exchange of information with all agencies, either public or private, responsible for issuing certificates of origin. Ecuador considered that the current a posteriori procedures for verification practised by the European Union were not an appropriate means of ensuring observation of the rules except where the information in the invoices and that in the certificate of origin did not match. It further considered that once a country had designated an official body as responsible for issuing certificates of origin, such certificates of origin should not be subject to additional verification except where there were discrepancies in the documentation. Niger reported no constraints in the administrative procedure. Jordan reported that the certification procedure did not give rise to any difficulty and suggested that the rules on direct consignment should include indirect shipment. The Central African Republic reported that failure to provide the information requested by preference-giving countries had prevented it from enjoying the real benefits of the GSP. It said certification should be entrusted to a single state agency. Mexico said that it would be better if the actual producer or exporter could issue the GSP Form A certificate instead of it having to be officially certified by public authorities. Colombia said that it would be desirable to add on Form A a box or column to indicate the 6-digit

position of each export product in the HS. Nepal said that the administrative procedures were simple and practical. However, it recommended that preference-giving countries should communicate all procedures related to GSP to the Form A issuing authorities. Thailand requested the European Union and Canada to consider using FOB value instead of the ex-factory value in computing origin. Senegal recommended the expansion of cumulative rules of origin at the regional and sub-regional levels. Bangladesh proposed that a low minimum local content requirement, special rules of origin for LDCs, the donor country content rule and global cumulation facilities should be applied by all preference-giving countries. Indonesia stated that improvement of administrative procedures was needed with a view to increasing GSP benefits. In its view, so far only the European Union had implemented such verification procedures, the purpose of which was not only to determine whether an exporter had met the GSP requirement but also to allow the exporter to correct his mistake. The Philippines recommended a simplification of documentary requirements. No problems had been encountered by Sri Lanka and Mauritius. The Republic of Korea recommended improved bilateral cooperation for verification of origin requirements. Malta suggested that all preference-giving countries should adopt the same denominator for calculating minimum local cost. All GSP preference-giving countries should offer global cumulation facilities to preference-receiving countries, as cumulation on a regular basis may discriminate against countries not involved in any regional or economic grouping.

41. China suggested bringing rules of origin into line through the Trade and Development Board's Special Committee on Preferences. Applying the process criterion uniformly and getting rid of the harsh clauses would help their application by both preference-receiving and donor countries and benefit the preference-receiving countries while simplifying the task of administration on both sides. In addition, China made the following proposals:

> "(a) All schemes should apply global cumulation rules and donor country content arrangements, to answer the needs of international trade;
>
> (b) As regards consignment provisions, for historical and geographical reasons, Hong Kong is a major transhipment point for Chinese and international trade - over 60 per cent of China's exports are transhipped via Hong Kong. But a practical problem arises in this: some preference-giving countries have established special certification for China in their consignment provisions. We therefore suggest that other preference-giving countries should also be able to give positive consideration to China's special circumstances and make reasonable arrangements within their consignment provisions;
>
> (c) On commercial grounds, it should be permissible to leave column 2 of GSP Form A origin certificate blank;
>
> (d) The form A issuance rules under different schemes should be harmonized: some schemes allow retroactive and ex post facto certificates, but some have no rule and yet accept such certificates in practice;

(e) Individual preference-giving countries' rules limiting the time that visas are kept on file should be harmonized, and the rules on time-limits for querying withdrawal of certification should be clarified;

(f) To boost administrative coordination between preference-giving and receiving countries, when withdrawal of certification is queried, the preference-giving country ought to furnish the appendices to the certificate, such as commercial receipts, bills of lading and so forth, to facilitate the task of the preference-receiving country's issuing machinery;

(g) UNCTAD should harmonize the periods for which certificates issued by preference-giving countries are valid: under some schemes at present, they are valid for 10 months, under others for a year, and other schemes again have no provision on validity.

(8) Does your country have specific requirements for technical assistance regarding GSP rules of origin? If yes, with regard to which particular problems and in what desirable form?

42. Technical assistance in general was requested by: Belarus, Central African Republic, Chad, Colombia, Ecuador, Ethiopia, Mali, Nepal, Niger, Senegal, Sri Lanka and Togo. Bolivia considered one main priority to be the training of its technical staff in industrialized countries to which Bolivian goods are exported. Thailand urged that information and guidance about the GSP rules of origin and linkages to the Uruguay Round results should be provided and supported by seminars and other forms of technical assistance. China said that consideration should be given, during the implementation of technical assistance activities, to inviting more experts from preference-receiving countries. The Philippines requested in particular a technical study on the possibility of sourcing raw material components from different suppliers in order to be able to comply with the stringent origin criteria of the European Union and Japan.

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Annex I

QUESTIONNAIRE ON THE HARMONIZATION, SIMPLIFICATION AND IMPROVEMENT OF THE RULES OF ORIGIN

Introduction

The purpose of this questionnaire is to seek the views of both preference-receiving and preference-giving countries on GSP rules of origin with a view to their harmonization, simplification and improvement.

As the international trade environment has changed, e.g. with the conclusion of the Uruguay Round, it is now important to obtain country positions on GSP rules of origin in order to reflect those views correctly for the Policy Review exercise. Your urgent response to this questionnaire would therefore be appreciated. Any additional proposals or suggestions that will assist the work on this issue would be welcome.

A. Questionnaire to preference-giving countries

1. The GSP rules of origin consist of three main elements, namely, origin criteria, documentary evidence and the direct consignment rules. What is your country's position with regard to these elements? On which element(s) should attention focus?

2. Would your Government consider the proposal to change your present basic origin system for GSP to:

   (i) An across-the-board percentage criterion for all products?

   (ii) The process criterion (using, inter alia, the change in HS headings)?

   If yes, what would be the preferred way of specifying qualifying processes for GSP purposes and the range of products for which such definitions are required?

3. Is further harmonization of origin systems feasible without a change in the basic system? For example by:

   (i) The expression of the percentage rules applied within percentage and process systems in terms of an internationally agreed maximum percentage of third country contents allowed and of common definitions;

(ii) Product-specific harmonization across preference-giving countries for all percentage requirements applied by any scheme to an individual eligible product;

(iii) Any other way of harmonization?

4. Is there scope for simplifying the application of the process criterion:

(i) On a national basis, by consolidating combinations of criteria for a single product into a single process requirement for that product?

(ii) Internationally, by progressively agreeing amongst some or all preference-giving countries on a single list of common process criteria for each eligible product?

5. Is the introduction of donor-country contents applied, envisaged or feasible?

(i) If not: what are the specific problems and difficulties preventing its introduction?

(ii) If applied, what use has been made of this facility (countries, products, frequencies, etc.)?

Have any major difficulties arisen and how could they be resolved?

6. Is cumulation amongst preference-receiving countries applied, envisaged or feasible?

- **Amongst all beneficiary countries or developing country beneficiaries?**

- In favour of specific subregional groupings, with possibilities for extention?

(i) If not, what are the specific problems and difficulties preventing its introduction?

(ii) If applied, what use has been made of this facility?

Have any major difficulties arisen and how could they be resolved?

7. Does your country apply or envisage special origin criteria in favour of least developed countries?

- By way of ad hoc derogations in specific cases?
- As a general rule with less stringent requirements (for example by a lower percentage requirement or a tariff jump at the six-digit level of the Harmonized System)?

8. Are improvements in administrative and certification procedures intended or feasible:

   (i) Regarding technical aspects of Form A (paper quality, etc.)?

   (ii) Regarding certification procedures (notification requirements, limitations of certifying authorities, etc.)?

   (iii) Regarding consignment requirements?

   (iv) Regarding other aspects, taking also into account eventual possibilities of internal harmonization of rules and procedures applied in other origin systems of your country?

B. Questionnaire to preference-receiving countries

1. The GSP rules of origin consist of three main elements, namely, origin criteria, documentary evidence and the direct consignment rules. What is your country's position with regard to these elements? On which element(s) should attention focus?

2. Would your country prefer an across-the-board percentage criterion or the process criterion (specifying individual product requirements using, inter alia, the change in HS tariff position) as applied by major existing schemes in order to determine whether substantial transformation has occurred?

3. Which exporters and what products are encountering particular problems with the origin rules, as applied with regard to:

   (i) Understanding the implications of different rules for the same products?

   (ii) The need to adjust production processes or input sourcing to different criteria in different preference-giving countries?

(iii) The stringency of particular criteria for important export products (are there specific cases, for example, where exports are possible to the United States but not to the European Union or vice versa)?

(iv) Any other problems?

4. Has your country taken advantage of the donor country content facilities, where applied (donor country, type of product, frequency, etc.)? Were any problems encountered?

5. Has your country taken advantage of the regional/subregional cumulation facilities, where applied (donor country, type of product, frequency, examples of regional inputs and sources)? Were any problems encountered?

6. In the case of least developed countries, has your country drawn effective benefits from more favourable origin requirements or derogation possibilities, where available (main products, frequency, etc.)? If not or rarely, what have been the major problems or obstacles with regard to the use of such facilities?

7. What improvements in administrative or certification procedures or in consignment and other ancillary origin rules would be most needed with respect to individual GSP schemes?

8. Does your country have specific requirements for technical assistance regarding GSP rules of origin? If yes, with regard to which particular problems and in what desirable form?

Annex II

LIST OF COUNTRIES WHICH REPLIED TO THE RULES OF ORIGIN QUESTIONNAIRE

Preference-giving countries

- Australia
- Austria
- Canada
- European Union
- Finland
- France
- Hungary
- Japan
- New Zealand
- Switzerland

Preference-receiving countries

- Bangladesh
- Belarus
- Bolivia
- Central African Republic
- Chad
- China
- Colombia
- Ecuador
- Ethiopia
- Indonesia
- Jordan
- Malta
- Mali
- Mauritius
- Mexico
- Nepal
- Niger
- Philippines
- Republic of Korea
- Senegal
- Sri Lanka
- Thailand
- Togo